EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Lisa Adams on 05 May 2010.

The application has been amended as follows:

Claim 1, line 12, after "biocompatible, ", --internally-- has been inserted.

Claim 42, line 12, after "biocompatible, " --internally-- has been inserted.

Claim 43, line 10, after "anchor ", --internally-- has been inserted.

Claim 46, line 10, after "biocompatible, ", --internally-- has been inserted.

The following is an examiner's statement of reasons for allowance: In the interview on 05 May 2010, Applicant agreed to further specify that the spinal fixation rod and spinal anchor are internally implantable. It was agreed in the interview that the device of Lai (a bicycle handlebar) would not be considered to be internally implantable by a person of ordinary skill in the art. The material of Lai is not disclosed, but even if it were made of titanium alloy, or the like (as taught by Carden), there is no evidence that such an alloy would be implantable (see, e.g., Applicant's arguments filed 04 November 2009, page 10, lines 15-25). It was also noted that the offset or bent shape of the bicycle handlebar of Lai is not capable of extending in a generally straight or slightly curved manner, so as to even be capable of following or properly supporting the contour

of a human spine. The handlebar of Lai would also not be suitable for internal implantation for spinal fixation because of its size and shape and the potential for injury and irritation of the spine and surrounding anatomy (see, e.g., specification paragraphs 0002-0005, 0030, and 0041). In addition, the device of Lai lacks a spinal anchor implantable into bone. If one considers screws 26 to be the spinal fixation anchor, two problems arise. First, the screws are machine screws that are designed to engage a fine pitch thread in mating metal structure. Second, even if the threads were capable of engaging bone, they are screwed into blind threaded holes in the bicycle neck and could not function as spinal anchors implantable in bone while mating to the elongate member as claimed. Accordingly, for these reasons, it was agreed that the claims are not anticipated nor rendered obvious by Lai and/or Carden. As this is the closest known prior art, and it still does not anticipate or render obvious the claimed invention, the claims have been allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710 (a detailed message should be left if Examiner is unavailable). If attempts to reach the Examiner by telephone or voicemail are unsuccessful, the examiner's

supervisor, Eduardo Robert, can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David Comstock/
Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733